

Internal Revenue Service, Treasury

§ 20.2056(a)-2

(1) Decedents dying after October 3, 1966, and before January 1, 1977.

(2) Decedents dying after September 30, 1963, and before October 4, 1966.

(3) Decedents dying before October 4, 1966.

[T.D. 8522, 59 FR 9647, Mar. 1, 1994, as amended by T. D. 8612, 60 FR 43538, Aug. 22, 1995]

**§ 20.2056(a)-1 Marital deduction; in general.**

(a) *In general.* A deduction is allowed under section 2056 from the gross estate of a decedent for the value of any property interest which passes from the decedent to the decedent's surviving spouse if the interest is a *deductible interest* as defined in § 20.2056(a)-2. With respect to decedents dying in certain years, a deduction is allowed under section 2056 only to the extent that the total of the deductible interests does not exceed the applicable limitations set forth in paragraph (c) of this section. The deduction allowed under section 2056 is referred to as the *marital deduction*. See also sections 2056(d) and 2056A for special rules applicable in the case of decedents dying after November 10, 1988, if the decedent's surviving spouse is not a citizen of the United States at the time of the decedent's death. In such cases, the marital deduction may not be allowed unless the property passes to a qualified domestic trust as described in section 2056A(a).

(b) *Requirements for marital deduction—(1) In general.* To obtain the marital deduction with respect to any property interest, the executor must establish the following facts—

(i) The decedent was survived by a spouse (see § 20.2056(c)-2(e));

(ii) The property interest passed from the decedent to the spouse (see §§ 20.2056(b)-5 through 20.2056(b)-8 and 20.2056(c)-1 through 20.2056(c)-3);

(iii) The property interest is a *deductible interest* (see § 20.2056(a)-2); and

(iv) The value of the property interest (see § 20.2056(b)-4).

(2) *Burden of establishing requisite facts.* The executor must provide the facts relating to any applicable limitation on the amount of the allowable marital deduction under § 20.2056(a)-1(c), and must submit proof necessary to establish any fact required under paragraph (b)(1), including any evi-

dence requested by the district director.

(c) *Marital deduction; limitation on aggregate deductions—(1) Estates of decedents dying before 1977.* In the case of estates of decedents dying before January 1, 1977, the marital deduction is limited to one-half of the value of the *adjusted gross estate*, as that term was defined under section 2056(c)(2) prior to repeal by the Economic Recovery Tax Act of 1981.

(2) *Estates of decedents dying after December 31, 1976, and before January 1, 1982—* Except as provided in § 2002(d)(1) of the Tax Reform Act of 1976 (Pub. L. 94-455), in the case of decedents dying after December 31, 1976, and before January 1, 1982, the marital deduction is limited to the greater of—

(i) \$250,000; or

(ii) One-half of the value of the decedent's adjusted gross estate, adjusted for *intervivos* gifts to the spouse as prescribed by section 2056(c)(1)(B) prior to repeal by the Economic Recovery Tax Act of 1981 (Pub. L. 97-34).

(3) *Estates of decedents dying after December 31, 1981.* In the case of estates of decedents dying after December 31, 1981, the marital deduction is limited as prescribed in paragraph (c)(2) of this section if the provisions of § 403(e)(3) of Pub. L. 97-34 are satisfied.

[T.D. 8522, 59 FR 9648, Mar. 1, 1994]

**§ 20.2056(a)-2 Marital deduction; “deductible interests” and “nondeductible interests”.**

(a) *In general.* Property interests which passed from a decedent to his surviving spouse fall within two general categories:

(1) Those with respect to which the marital deduction is authorized, and

(2) Those with respect to which the marital deduction is not authorized.

These categories are referred to in this section and other sections of the regulations under section 2056 as “*deductible interests*” and “*nondeductible interests*”, respectively (see paragraph (b) of this section). Subject to any applicable limitations set forth in § 20.2056(a)-1(c), the amount of the marital deduction is the aggregate value of the *deductible interests*.

(b) *Deductible interests.* An interest passing to a decedent's surviving